(24)

NO. 154

Office - Supreme Court, U. S.
FILED
JUN 17 1942
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1941

KEYSTONE FREIGHT LINES, INC., a Corporation,
Petitioner,

VERSUS

LEE WAY MOTOR FREIGHT, INC., a Corporation; POWELL BROS. TRUCK LINES, INC., a Corporation; CLANTON TRANSPORTATION COMPANY, a Corporation; PANHANDLE MOTOR LINES, a Corporation; RISS & COMPANY, INC., a Corporation; CAIN'S TRUCK LINES; THE SANTA FE TRAILS TRANSPORTATION COMPANY; and RALPH W. PORTER, Executor of the Estate of ERNEST W. LYMAN, Deceased, Sole Owner and Doing Business Under the Firm Name and Style of Lyman Truck Lines,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT, AND SUPPORTING BRIEF

JOHN B. DUDLEY,
DUKE DUVALL,
Counsel for Petitioner.

June, 1942.

UTTERBACK TYPESETTING CO., OKLAHOMA CITY, OKLA.

INDEX

Page

ition 1

Caption 1

A Summary Statement of the matter involved 1

Decisions Below 3

Jurisdiction 4

Questions Presented 4

Reasons Relied on for Allowance of Writ 5

ief 9

Opinions of the Courts Below 9

Jurisdiction 10

Statement of the Case 10

Specifications of Errors 10

Summary of the Argument 11

Argument 12

Point I. The Circuit Court of Appeals, in probable conflict with the applicable decisions of this Court, held that there was a labor dispute involved in this case within the purview of the Norris-La Guardia Act 12

Point II. The question involved is one of great public importance which the Circuit Court of Appeals has erroneously decided in reversing the trial court, and is a question of which this Court should take jurisdiction and set at rest 13

Conclusion 16

ppendix 16

Page

AUTHORITIES CITED

Columbia River Packers Association, Inc., v. H. B. Hinton et al., — U. S. —, 62 S. Ct. 520, 86 L. ed. 441 (Ad. Ops.) 6, 12
International Brotherhood v. Keystone Freight Lines, 123 Fed. (2d) 326 3
Keystone Freight Lines v. Pratt Thomas Truck Lines, 37 Fed. Sup. 635 3
Lee Way Motor Freight Lines v. Keystone Freight Lines, 126 Fed. (2d) 931 3
Milk Wagon Drivers' Union v. Lake Valley Farm Products, 311 U. S. 91, 85 L. ed. 63 16
Missouri Pacific Ry. Co. v. Larabee Flour Mills Co., 211 U. S. 612, 29 S. Ct. 214, 53 L. ed. 352 12
National Labor R. Board v. Keystone Freight Lines, 126 Fed. (2d) 414 (10th Cir.) 3
New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552, 82 L. ed. 1012 16
Peoria & Pekin Union Railway Co. v. United States, 263 U. S. 528, 44 S. Ct. 194, 68 L. ed. 427 12
Planters Nut & Chocolate Company v. American Transfer Co., 31 M. C. C. 719 (decided January 21, 1942, not yet available in bound volume) 14
United States v. American Trucking Association, 310 U. S. 534, 543, 60 S. Ct. 1059, 84 L. ed. 1345, 1350 13
United States v. Rosenblum Truck Line, — U. S. —, 62 S. Ct. 445, 86 L. ed. 387, 390 13

STATUTES CITED

Federal Motor Carrier Act of 1935, as amended, 49 U. S. C. A. 301-327 .....1, 12
Interstate Commerce Act, 49 U. S. C. A., Section 1 *et seq.* 13
Norris-La Guardia Act, 29 U. S. C. A. 101-115 3
Section 240(a), Judicial Code, as amended 28 U. S. C. A. 347(a) 4, 10

NO. .....

In the Supreme Court of the United States

OCTOBER TERM, 1941

KEYSTONE FREIGHT LINES, INC., a Corporation,
Petitioner,

VERSUS

LEE WAY MOTOR FREIGHT, INC., a Corporation; POWELL BROS. TRUCK LINES, INC., a Corporation; CLANTON TRANSPORTATION COMPANY, a Corporation; PANHANDLE MOTOR LINES, a Corporation; RISS & COMPANY, INC., a Corporation; CAIN'S TRUCK LINES; THE SANTA FE TRAILS TRANSPORTATION COMPANY; and RALPH W. PORTER, Executor of the Estate of ERNEST W. LYMAN, Deceased, Sole Owner and Doing Business Under the Firm Name and Style of Lyman Truck Lines,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Keystone Freight Lines, Inc., respectfully shows:

A SUMMARY STATEMENT OF THE MATTER INVOLVED

The pertinent facts were stipulated in the trial court (R. 77). Petitioner is a common carrier of commodities generally in interstate commerce by motor vehicle, operat-

ing under certificate of authority from the Interstate Commerce Commission under the provisions of the Federal Motor Carrier Act of 1935, as amended (49 U. S. C. A. 301-327) (R. 91).

The respondents are likewise such carriers, and have on file with the Interstate Commerce Commission joint tariffs and through rates with petitioner (R. 91).

On a certain date, respondents and other defendant motor carriers who did not appeal from the judgment of the trial court, constituting more than thirty in number (R. 81) and a majority of the carriers of this type operating into Tulsa and Oklahoma City, suddenly refused to interline freight with petitioner as required by the Interstate Commerce Act and the aforesaid tariffs of said carriers (R. 76, 92).

This action was then instituted in the District Court of the United States for the Western District of Oklahoma, for a mandatory injunction to compel said carriers to perform their duties as common carriers under the Interstate Commerce Act and the aforesaid tariffs, and interline freight with petitioner.

The defendant carriers stipulated (R. 93) that the sole reason for the termination of their relationship with petitioner was because of a notice from the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, with which they each had closed-shop contracts, that petitioner had been placed upon the Union's un-

fair list, and that if their employees were required to handle such freight, they would be called out on strike.

Petitioner was involved in a labor dispute with the Teamsters Union at the time of the cessation by defendant carriers of their connecting carrier relationship with petitioner and at the time of the commencement and trial of this action. *National Labor R. Board* v. *Keystone Freight Lines,* 126 Fed. (2d) 414 (10th Circuit).

DECISIONS BELOW

Neither the Labor Union nor any of its members were parties to the suit; nor were any employees of plaintiff or defendants parties. The Union petitioned for leave to intervene, which was refused by the trial court, *Keystone Freight Lines* v. *Pratt Thomas Truck Lines,* 37 F. S. 635, and appeal was dismissed by the Circuit Court, *International Brotherhood* v. *Keystone Freight Lines,* 123 Fed. (2d) 326.

The trial court granted the injunction (R. 83), and the Circuit Court reversed (R. 108, 113). *Lee Way Motor Freight Lines* v. *Keystone Freight Lines,* 126 Fed. (2d) 931, holding that the trial court was without jurisdiction to grant the injunction under the Norris-La Guardia Act, 29 U. S. C. A. 101-115.

JURISDICTION

The date of the decision and judgment sought to be reviewed is March 18, 1942 (R. 108, 113).

The petition is filed under the provisions of Section 240(a) of the Judicial Code, as amended, 28 U. S. C. A. 347(a).

QUESTIONS PRESENTED

The decision of the Circuit Court of Appeals is based upon the aforesaid stipulation of facts filed by the parties in the trial court, and the question involved is purely one of law.

The sole issue is whether or not the Norris-La Guardia Act applies and rendered the trial court without jurisdiction to enter the mandatory injunction. The questions presented are:

(1) Is there a labor dispute involved within the purview of the Norris-La Guardia Act, where neither employees, labor unions nor their members are parties to the action, and where neither wages, hours, conditions of employment nor representation of employees were involved in the suit?

(2) Is the Norris-La Guardia Act a defense to a suit by a shipper or connecting carrier to enforce common carriers to perform their statutory and common law duties, because such shipper or connecting carrier is involved in a labor dispute?

(3) The Interstate Commerce Commission has held[1] that it is no defense by a motor carrier for failure to perform its duties as a common carrier under the Interstate Commerce Act, that it had a closed-shop union contract providing that it should not handle the goods of one declared unfair by the Union, and the shipper whose goods the motor carrier refused to handle had been placed upon the unfair list by such Union. The Commission held such action unlawful, and ordered such carrier to cease and desist from such refusal to handle the goods of such shipper. Was it the intention of Congress that the Norris-La Guardia Act should prevent enforcement of such orders by the federal courts, or an original action in the federal courts to enforce performance of its common law and statutory duty by a common carrier under such circumstances?

REASONS RELIED ON FOR ALLOWANCE OF WRIT

The reasons upon which petitioner relies for the granting of this petition are as follows:

(1) The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with the applicable decisions of this Court. In any event, if this not be true, then,

(2) The Circuit Court of Appeals has decided an important question of federal law which has not been but

---

1. *Planters Nut & Chocolate Company* v. *American Transfer Company*, 31 M. C. C. 719, decided January 21, 1942 (not yet available in bound volume).

should be settled by this Court. *Columbia River Packers Association* v. *Hinton*, 62 S. Ct. 520, 86 L. ed. 441 (Ad. Ops.).

(3) The question involved is one of great public importance, affecting the enforcement of the duties of common carriers by motor vehicle under the Interstate Commerce Act, the power of enforcement of orders of the Interstate Commerce Commission requiring common carriers by motor vehicle to perform their duties under the Interstate Commerce Act, and affects the entire motor carrier industry of the Nation and the general shipping public.

Accompanying this petition is a certified transcript of the record in the case, including the proceedings in the Circuit Court of Appeals.

Wherefore, petitioner respectfully prays that a writ of certiorari may be issued out of and under the Seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket: No. 2398, Lee Way Motor Freight, Inc., a corporation; Powell Bros. Truck Lines, Inc., a corporation; Clanton Transportation Company, a corporation; Panhandle Motor Lines, a corporation; Riss & Company, Inc., a corporation; Cain's Truck Lines; The Santa Fe Trails Transportation Company; and Ralph W. Porter, executor of the estate of Ernest W.

Lyman, deceased, sole owner and doing business under the firm name and style of Lyman Truck Lines, Appellants, *vs.* Keystone Freight Lines, Inc., a corporation, Appellee; and that the said judgment of the Circuit Court may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem mete and just; and your petitioner will ever pray.

JOHN B. DUDLEY,
DUKE DUVALL,
Counsel for Petitioner.

June, 1942.

NO. .....

In the Supreme Court of the United States

OCTOBER TERM, 1941

KEYSTONE FREIGHT LINES, INC., a Corporation,
Petitioner,

VERSUS

LEE WAY MOTOR FREIGHT, INC., a Corporation; POWELL BROS. TRUCK LINES, INC., a Corporation; CLANTON TRANSPORTATION COMPANY, a Corporation; PANHANDLE MOTOR LINES, a Corporation; RISS & COMPANY, INC., a Corporation; CAIN'S TRUCK LINES; THE SANTA FE TRAILS TRANSPORTATION COMPANY; and RALPH W. PORTER, Executor of the Estate of ERNEST W. LYMAN, Deceased, Sole Owner and Doing Business Under the Firm Name and Style of Lyman Truck Lines,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS OF THE COURTS BELOW

The district court filed one opinion, entered January 24, 1941. It was written by District Judge Edgar S. Vaught. This opinion, though dealing primarily with the denial of the petition of intervention of the Union, does also cover to some extent the merits of the case. No opinion was filed by the district court in connection with the permanent decree of mandatory injunction. The findings of

fact and conclusions of law upon which the decree is based are at page 83 and following of the record.

The Circuit Court of Appeals filed two opinions, the first one affirmed the above-mentioned opinion of the district court denying the Union permission to intervene. This opinion is reported in 123 Fed. (2d) 326 (Judges PHILLIPS, BRATTON and HUXMAN, Judge BRATTON writing), and is dated October 24, 1941. The opinion on the merits (Judges PHILLIPS, BRATTON and MURRAH, Judge BRATTON writing) is dated March 18, 1942, and appears at page 108 of the record. It is reported in 126 Fed. (2d) 931.

JURISDICTION

Petitioner seeks a review by certiorari under Section 240(a) of the Judicial Code, as amended, 28 U. S. C. A. 347, of the judgment of the United States Circuit Court of Appeals for the Tenth Circuit, entered March 18, 1942.

STATEMENT OF THE CASE

The essential facts of the case are stated in the foregoing and accompanying petition for certiorari, and for the sake of brevity, we will not repeat them here.

SPECIFICATION OF ERRORS

(1) The Circuit Court of Appeals erred in reversing the trial court with instructions to dismiss the case upon the grounds that the trial court was without jurisdiction to enter the mandatory injunction under the Norris-La Guardia Act.

(2) The Circuit Court of Appeals erred in holding that there was a labor dispute involved within the purview of the Norris-La Guardia Act, and that the trial court was without jurisdiction to enter the mandatory injunction unless the requirements of said Act were met.

(3) The Circuit Court of Appeals erred in holding that the Norris-La Guardia Act applied to this case, where no employees, labor unions or members thereof were parties to the suit, and where neither wages, hours, conditions of employment nor representation of employees were involved in the suit.

SUMMARY OF THE ARGUMENT

Point I.

The Circuit Court of Appeals, in probable conflict with the applicable decisions of this Court, held that there was a labor dispute involved in this case within the purview of the Norris-La Guardia Act.

Point II.

The question involved is one of great public importance which the Circuit Court of Appeals has erroneously decided in reversing the trial court, and is a question of which this Court should take jurisdiction and set at rest.

ARGUMENT

Point I.

The Circuit Court of Appeals, in probable conflict with the applicable decisions of this Court, held that there was a labor dispute involved in this case within the purview of the Norris-La Guardia Act.

The decision of the Circuit Court of Appeals is not in harmony with the decision of this Court in *Columbia River Packers Association, Inc.*, v. *H. B. Hinton et al.*, — U. S. —, 62 S. Ct. 520, 86 L. ed. 441 (Ad. Ops.), decided after the argument and submission of the case (R. 108), and of which no notice is taken in the opinion of the Circuit Court.

In that case, the Court held that a labor dispute was not involved within the purview of the Norris-La Guardia Act, notwithstanding the fact that a labor union was a party, since wages, hours and conditions of employment were not involved. The case at bar was instituted to enforce by coercive writ the performance by common carriers of their duties under the Federal Motor Carrier Act of 1935, as amended, 49 U. S. C. A. 301-327, and compliance with the joint through rates embodied in the tariffs such carriers had on file with the Interstate Commerce Commission.

A common carrier can be compelled by coercive writs of mandamus, mandatory injunctions and otherwise to perform its duties under the statutes and common law. *Peoria & Pekin Union Railway Company* v. *United States*, 263 U. S. 528, 44 S. Ct. 194, 68 L. ed. 427; *Missouri Pacific Railway Company* v. *Larabee Flour Mills Company*, 211 U. S. 612, 29 S. Ct. 214, 53 L. ed. 352.

Even the broad definition of a "labor dispute" in the

Norris-La Guardia Act is not extensive enough to expand the coverage of the Act to include a situation of this kind and a suit where neither employees, labor unions nor their members are parties.

It was never the intention of Congress to emasculate effective enforcement of the duties of the common carriers of the Nation to the public by enactment of the Norris-La Guardia Act, but that is the effect of the holding of the Circuit Court of Appeals. To avoid reaching such an unreasonable conclusion, the Court will go so far as to disregard the plain meaning of the words of the statute. *United States* v. *Rosenblum Truck Line*, — U. S. —, 62 S. Ct. 445, 86 L. ed. 387, 390; *United States* v. *American Trucking Association*, 310 U. S. 534, 543, 60 S. Ct. 1059, 84 L. ed. 1345, 1350.

Point II.

The question involved is one of great public importance which the Circuit Court of Appeals has erroneously decided in reversing the trial court, and is a question of which this Court should take jurisdiction and set at rest.

We have said that the question involved is one of great national significance. It affects the entire motor carrier industry and the shipping public. More than that, it casts grave doubt upon the power vested in the Interstate Commerce Commission to perform the duties placed upon it by Congress in the Interstate Commerce Act (49 U. S. C. A., Section 1 *et seq.*) in enforcing the obligations resting upon common carriers to the public, both by said Act and under the common law.

Recently, the Commission had before it a case practically identical with the case at bar[1]. The Teamsters Union was allowed to intervene. It was held that the refusal or failure of the motor carrier respondents to transport the freight of the complainant under a situation like the present one, was unlawful, and the Commission ordered such carriers to cease and desist from such unlawful practice.

If this is sought to be enforced in the Federal Court by a coercive writ, since the Commission cannot enforce it, it was not the intention of the framers of the Constitution that the Norris-La Guardia Act should stand as a bar.

There is no real distinction between that sort of case and the case at bar where the suit is originally commenced in the district court to compel the performance of the same duties by the same sort of writ.

Of course, it might be said that the Interstate Commerce Commission could cause the certificate of convenience and necessity of the carrier to be revoked, but this does not accomplish the ultimate proceeding in the first place, that is, to secure service to the public.

Reflecting light upon the importance of this question is the language of the trial court in 37 F. S. 635:

---

1. *Planters Nut & Chocolate Company* v. *American Transfer Company*, 31 M. C. C. 719, decided January 21, 1942 (not yet available in bound volume). The pertinent portions of the opinion of the Interstate Commerce Commission are set out in the Appendix, for the convenience of the Court. The opinion is not reproduced in full because of its length.

> "The Norris-La Guardia Act is a long step from the rules theretofore existing, and it is clear that the sole purpose of this Act is to prevent injunctive relief against labor unions or employees who are members of a labor union. It is apparent from reading the Norris-La Guardia Act that Congress did not omit anything that might be a protection to labor unions, and we are not criticizing the Act, but certainly it was not contemplated by Congress, nor even by the labor unions themselves, that courts would extend and enlarge the powers granted to labor unions to such an extent that it would give such unions the right to interfere boldly and by written contracts with the enforcement of the laws of the United States."

And the ultimate result will be to render an important feature of the Interstate Commerce Act ineffective, as Judge VAUGHT said:

> "In the case at bar, if this plaintiff cannot continue its interstate transportation under the provision of the Motor Carrier Act without the consent of the Local Union, then in effect we are admitting, as courts, that a statute of the United States is ineffective unless consent to its enforcement is granted by local labor unions."

The great importance of this question is plain when it is realized that the decision of the Circuit Court ofAppeals means that wherever a shipper is involved in a labor dispute, the Norris-La Guardia Act prevents the enforcement of the duties of a common carrier under its tariffs, the Interstate Commerce Act and the common law.

The decision of the Circuit Court of Appeals carries the expanse of the Norris-La Guardia Act beyond the fur-

thest frontiers of the decisions of the Court defining the intention and background of Congress. *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U. S. 91, 85 L. ed. 63; *New Negro Alliance* v. *Sanitary Grocery Company*, 303 U. S. 552, 82 L. ed. 1012.

This case is not of the sort brought under the Sherman Anti-Trust Act, which this Court has said the legislative history of the Norris-La Guardia Act shows was sought to be limited.

In no case before this Court construing the Norris-La Guardia Act has the question been presented of the effect of that Act upon the enforcement of the Interstate Commerce Act.

CONCLUSION

The petitioner respectfully urges that the decision of the Circuit Court of Appeals reversing the trial court is contrary to the earlier decisions of this Court and to sound principles of statutory construction; that the questions presented are of grave importance to the public generally and unless the errors in the decision of the Circuit Court are corrected, the power to enforce the duties of common carriers under the Interstate Commerce Act and the common law will be emasculated.

Respectfully submitted,

JOHN B. DUDLEY,
DUKE DUVALL,
Counsel for Petitioner.

June, 1942.

APPENDIX

INTERSTATE COMMERCE COMMISSION

NO. MC-C-223

PLANTERS NUT & CHOCOLATE COMPANY ET AL.

vs.

AMERICAN TRANSFER COMPANY ET AL.

Submitted October 27, 1941. Decided January 21, 1942.

Upon complaint that the refusal of certain motor common carriers to interchange complainants' interstate shipments with certain other motor common carriers at Richmond and Roanoke, Va., violated the Interstate Commerce Act, found that the refusal and continuous refusal of certain defendants to accept from or deliver to certain other defendants at Richmond interstate freight shipped by or to complainants, was and is unlawful; and that the refusal of a certain defendant to interchange interstate freight with another defendant at Roanoke during a five-week period ending in August, 1940, was unlawful. Complaint dismissed as to certain defendants and cease and desist order entered as to others.

Jack R. Turney, Jr., for complainants.

E. H. Deacon, Raymond Gittleman, Leonard R. Hall, Morton J. Hollander, Everett B. Lackie, Ralph C. Lynn, Glenn F. Morgan, John L. Walker, and *Lloyd Watner* for defendants.

Henry Kaiser, Joseph A. Padway, Fred A. Tobin, and *Robert A. Wilson* for intervener.

REPORT OF THE COMMISSION

By the Commission:

Exceptions were filed by complainants, defendant Baltimore Transfer Company, and intervener to the report proposed by the examiner, the complainants replied thereto and the parties were heard in oral argument by division 3. Our conclusions differ somewhat from those recommended.

By complaint filed November 26, 1940, Planters Nut & Chocolate Company, a corporation, having its main office at Suffolk, Va., Tubize Chatillon Corporation, having its main office at New York, N. Y., Roanoke Public Warehouse of Roanoke, Va., Maid Bess Garment Company of Salem, Va., Craddock-Terry Company, a corporation having its main office at Lynchburg, Va., and Elizabeth City Hosiery Mills, a corporation with offices at Elizabeth City, N. C., allege that the refusal of the defendant motor common carriers to transport certain interstate freight, properly packed and addressed, tendered to them by complainants and consigned to various points in the United States and the continual refusal to accept and transport such traffic constitutes a violation of the Interstate Commerce Act, that the failure to perform their duties as common carriers of property, in interstate or foreign commerce, by motor vehicle, as defined in section 203(a)(14) of the act, and to comply with the terms of their published tariffs, which specify joint rates in connection with such shipments over the lines of defendants, is unlawful and that such refusal causes unjust discrimination and undue and un-

reasonable prejudice and disadvantage to complainants in violation of section 216(d) of the act. The complainants pray that an order be entered requiring defendants, and each of them, to cease and desist from the alleged violations of the act and to fulfill their obligations as common carriers under the act by accepting and carrying all freight of complainants, "upon threat of loss of their franchises to operate and for such other relief as the Commission may consider proper in the premises." The Teamsters-Chauffeurs, Warehousemen & Helpers, Local Union No. 592 of Richmond, Va., affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, intervened.

* * * * * * *

The testimony presented by the intervener summarized in the preceding paragraph, has been set forth in detail in order that its position may be clearly understood. It argues that the inability of complainants to secure joint-line movement of their freight is caused by the refusal of union employees to handle this freight and is a condition over which the carriers have no control. It asserts that the complaint is an action against the Group two carriers, brought by complainants in collusion with the Group one carriers. It maintains that this proceeding has arisen out of a labor dispute, and the refusal of the union employees to handle the interchange traffic, being "concerted action by employees in ceasing to follow their employment" is in effect a strike against the merchandise of non-union carriers in an attempt to force these carriers into submitting

to the demands of the union that they agree to have a "closed shop." It concludes that the action of its members is within the law and is not governed by the Interstate Commerce Act, and that we are without power to require the interchange of freight between union and non-union carriers notwithstanding the existence of through routes and joint rates.

We permitted the intervener to become a party and to present any evidence germane to the issues raised in the complaint. We have no jurisdiction over labor disputes, strikes, their settlements, or labor issues arising in connection therewith. We, therefore, shall not set forth or discuss the various federal statutes applicable to labor matters and the questions arising in connection therewith, discussed on exceptions and upon oral argument by defendant Baltimore Transfer and the intervener. As stated, the gravamen of the complaint is the refusal of certain common carriers to interchange interstate traffic with other common carriers, and to render to the complainants service which they hold themselves out to perform in their applicable tariffs. Labor difficulties arising in connection with the performance of such common carrier duties cannot be permitted to be used as a valid excuse for the carriers to discontinue rendering to the public the service which they are obliged to perform and to which the public is entitled.

Baltimore Transfer and Brooks argue that they, as corporations, have not refused to interchange interstate frieght with the Group one carriers but admit that their employees have refused to handle such freight. Although

the evidence shows that officials of certain of the Group two carriers also refused to accept shipments tendered by the Group one carriers, the question of fact whether such refusals were the acts of officials or employees, or both, is immaterial. The defendants cannot escape their common carrier obligations by asserting that the violations complained of are caused by their employees. The corporations are responsible under the law for the acts of employees performed in connection with common carrier duties; such acts are not beyond the scope of the employment. We conclude that the Group two carriers have refused and continue to refuse to interchange at Richmond with the Group one carriers interstate freight of complainants Planters and Elizabeth City Hosiery Mills, and that defendant Brooks refused to interchange at Roanoke with Rutherford during a five-week period ending in August, 1940, interstate freight of complainant Maid Bess Garment Company.

* * * * * * *

We find that the refusal and continuous refusal of the Group two carriers to accept from, or deliver to, the Group one carriers at Richmond interstate freight shipped by or to complainants Planters and Elizabeth City Hosiery Mills was and is unlawful, particularly with respect to the failure to provide adequate service, to observe just and reasonable practices and to comply with the provisions of their tariffs lawfully on file with this Commission, all in violation of section 216 of the act; and that the refusal of Brooks to interchange with Rutherford at Roanoke inter-

state freight during the five weeks' period ending in August, 1940, was unlawful.

An order will be entered requiring the Group two carriers to cease and desist from the practices herein found to be unlawful and dismissing the complaint as to the other defendants.